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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions

Report of the Secretary-General

Summary

The present report is submitted in compliance with paragraph 16 of General Assembly resolution 71/146. It highlights arrangements in the Secretariat related to assistance to third States affected by the application of sanctions, the operational changes that have occurred in the light of the shift in focus in the Security Council and its sanctions committees towards targeted sanctions and recent developments concerning the activities of the Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions.

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I. Introduction

1. In its resolution 71/146, the General Assembly requested the Secretary-General to submit a report to the Assembly at its seventy-second session on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions. The present report has been prepared in compliance with that request.

II. Measures for further improvement of the procedures and working methods of the Security Council and its sanctions committees related to assistance to third States affected by the application of sanctions

2. As noted in previous reports of the Secretary-General (A/62/206 and Corr.1, A/63/224, A/64/225, A/65/217, A/66/213, A/67/190, A/68/226, A/69/119, A/70/119 and A/71/166), several of the recommendations and best practices set out in the report of the Security Council Informal Working Group on General Issues of Sanctions (S/2006/997, annex) related to the improved design and monitoring of sanctions; however, the report did not contain any recommendations that explicitly referred to ways to assist third States affected by the unintended impact of sanctions. By its resolution 1732 (2006), the Security Council decided that the Informal Working Group had fulfilled its mandate as set out in the note by the President of the Council of 29 December (S/2005/841), took note with interest of the best practices and methods set out in the report of the Informal Working Group and requested its subsidiary bodies to take note of them also.

3. During the period under review, and in keeping with the shift of the Security Council from comprehensive economic sanctions to targeted sanctions, there continued to be no assessment reports concerning the likely or actual unintended impact of sanctions on third States.

4. Concerning the sanctions regimes currently in existence, in nearly every case in which the Security Council has decided that States shall freeze the assets owned or controlled by designated individuals and entities, the Council has also adopted exceptions by which States can signal to the relevant sanctions committee their intention to authorize access to frozen funds for a variety of basic and extraordinary expenses.[1] Such expenses can include tax payments, insurance premiums and public utility charges; reasonable professional fees and reimbursement of expenses associated with the provision of legal services; and fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources.

5. Furthermore, in recent years, whenever the Security Council has imposed an asset freeze it has also consistently provided that the measure would not prevent a designated person or entity from making payments due under a contract entered into prior to the listing of such a person or entity, provided that certain conditions had been met, and after notification by the relevant States to the relevant sanctions committee of the intention to make or receive such payments or to authorize, where

[1] See Security Council resolutions 1452 (2002) (as amended by resolutions 1735 (2006) and 2253 (2015)), 1591 (2005), 1596 (2005), 1636 (2005), 1718 (2006), 1844 (2008), 1907 (2009), 1970 (2011) (as updated by resolution 2009 (2011)), 2134 (2014), 2140 (2014) and 2206 (2015).

appropriate, the unfreezing of funds, other financial assets or economic resources for that purpose, 10 working days prior to such authorization.[2]

6. In 2016, in their annual reports to the Security Council, sanctions committees reported a total of 17 asset freeze notifications or requests for exemption from the asset freeze.[3]

7. In addition, also in connection with the asset freeze measure, in certain cases the Security Council has aimed to ensure that persons or entities, including in third States, are not held responsible for failure to comply with a contractual or other obligation when such failure is due to measures imposed by the Council in its resolutions.[4]

8. Since 2014, sanctions committees have increasingly organized meetings with regional States in order to initiate or strengthen dialogue with them, including for the purpose of discussing any implementation challenges that they might be facing. Six committees have held 20 such meetings.[5] Open briefings by the Chairs of the committees, of which there have been five since 2015, also provide a forum to hear from Member States about their concerns and challenges.[6]

III. Recent developments related to the role of the General Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions

9. In its resolution 59/45, the General Assembly reaffirmed the important roles of the Assembly and the Economic and Social Council in the area of assistance to third States confronted with special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Security Council. Should consultations be requested by those States, the Assembly and the Economic and Social Council will mobilize and monitor, as appropriate, the economic assistance efforts of the international community and the United Nations system on behalf of third States affected by sanctions.

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[2] See, for example, paragraph 21 of resolution 1970 (2011), paragraph 34 of resolution 2134 (2014), paragraph 14 of resolution 2140 (2014), paragraph 10 of resolution 2196 (2015) and paragraph 15 of resolution 2206 (2015).

[3] See S/2016/1078, S/2016/1080, S/2016/1115 and S/2016/1122.

[4] See paragraph 27 of resolution 1973 (2011), paragraph 13 of resolution 2087 (2013) and paragraph 18 of resolution 2182 (2014).

[5] The Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo (three meetings), the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan (four meetings), the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya (one meeting), the Security Council Committee established pursuant to resolution 2127 (2013) concerning the Central African Republic (five meetings), the Security Council Committee established pursuant to resolution 2140 (2014) (five meetings) and the Security Council Committee established pursuant to resolution 2206 (2015) concerning South Sudan (two meetings).

[6] Held by the Chairs of the Security Council Committee established pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities (three briefings), the Security Council Committee established pursuant to resolution 1718 (2006) and the Security Council Committee established pursuant to resolution 2140 (2014).

A. General Assembly

10. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met from 21 February to 1 March 2017. Its report contains a summary of the discussions on the question of the implementation of the Charter provisions relating to assistance to third States affected by sanctions (see A/72/33, chap. II.A).

B. Economic and Social Council

11. The Economic and Social Council approved its programme of work (see E/2017/1) and decided to include in the agenda of the coordination and management meeting a sub-item, 18 (m), entitled "Assistance to third States affected by the application of sanctions". No advance documentation was requested. The Council considered the matter on 6 July 2017 but took no action under that sub-item.

IV. Arrangements in the Secretariat related to assistance to third States affected by the application of sanctions

12. In accordance with the relevant resolutions of the General Assembly,[7] the competent units within the Secretariat have maintained their capacity to monitor information pertaining to any special economic problems in third States arising from the application of preventive or enforcement measures imposed by the Security Council, to evaluate any appeals to the Council made by such affected third States under the provisions of Article 50 of the Charter and to identify solutions to the special economic problems of those States.

13. As noted in the previous report (A/71/166), sanctions imposed by the Security Council that are currently in effect are all targeted in nature. The shift from comprehensive to targeted sanctions has significantly reduced the possibility of unintended adverse impacts on third States. Therefore, the need to explore practical and effective measures of assistance to third States affected by sanctions has been reduced accordingly. In fact, no official appeals by third States to monitor or evaluate unintended adverse impacts on non-targeted countries have been conveyed to the Department of Economic and Social Affairs since 2003.

14. To assess the impacts of sanctions on third States, detailed case studies are required to assess possible adverse impacts on individual countries, including both targeted and non-targeted countries. The impact of sanctions would need to be evaluated against a baseline drawn from recent historical trends in economic and social conditions in the particular countries or region. The report of the Informal Working Group on General Issues of Sanctions, the Sanctions Assessment Handbook and the Field Guidelines for Assessing the Humanitarian Implications of Sanctions published by the Inter-Agency Standing Committee include technical methods that can be used to review and assess special economic problems of third States affected by targeted sanctions.

15. The Department of Economic and Social Affairs has continued to explore remedial assistance to affected third States. The main findings and suggestions on this issue are available in the report of the Secretary-General (A/53/312) and in

[7] See resolutions 50/51, 51/208, 52/162, 53/107, 54/107, 55/157, 56/87, 57/25, 58/80, 59/45, 60/23, 61/38, 62/69, 63/127, 64/115, 65/31, 66/101, 67/96, 68/115, 69/122, 70/117 and 71/146.

background papers prepared for the ad hoc expert group meeting that was convened by the Department in 1998. It is difficult to update the information on assistance measures, as the nature of targeted sanctions and their likely impact, particularly the unintended economic consequences for third States, will vary by country and will require case studies.

16. According to the present Secretariat arrangement, the Department of Political Affairs, in consultation with the Department of Economic and Social Affairs, and at the request of the Security Council and its organs, is to assess the effects of sanctions regimes on third States and provide advice to the Council and its organs on the specific needs or problems of those third States (see A/57/165, para. 9). As mentioned above, however, there have been no requests by the Council or its organs for the Department of Economic and Social Affairs to monitor or evaluate specific cases of third States affected by sanctions.

17. The Compendium of the High-level Review of United Nations Sanctions[8] includes recommendations for the Security Council to conduct periodic assessments of the impact of its measures and to commission pre-assessments of the humanitarian and socioeconomic effects when contemplating the imposition of broad sectoral or financial sanctions. The Department of Economic and Social Affairs will continue to seek opportunities for collaborative work with other relevant parts of the Secretariat, international organizations and academic institutions, with a view to keeping abreast of similar and related methodologies and to improving the sanctions monitoring framework and sanction assessment methodology.

[8] A/69/941-S/2015/432, annex.